1970

The State of Utah v. Gary D. Acker : Defendant-Appellant's Brief

Utah Supreme Court

IN THE SUPREME COURT

OF THE STATE OF UTAH

THE STATE OF UTAH,
Plaintiff and Respondent,

vs.

GARY D. ACKER,
Defendant and Appellant.

Case No.
12268

DEFENDANT-APPELLANT'S BRIEF

Appeal from the Judgment of the Second District Court
for Weber County
Honorable Ronald O. Hyde

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TABLE OF CONTENTS

CASES CITED

American Motorcycle Ass'n. v. Davids, 158 N.W. 2d 272 (1968)
Commonwealth v. Howie, 238 N.E. 2d 373 (1968)
District of Columbia v. Brooke, 218 U.S. 138
Duncan v. Missouri, 153 U.S. 377
Everhardt v. New Orleans, 217 So. 2d 400 (1968)
Greswold v. Connecticut, 381 U.S. 479 (1965)
Illinois V. Fries, 150 N.E. (1969)
Love v. Bell, 465 P. 2d 118 (1970)
Nebbie v. New York, 291 U.S. 502 (1934)
Olmstead v. Colorado, 277 U.S. 438 (1928)
People v. Carmichael, 288 N.Y.S. 2d 931 (1968)
People v. Smallwood, 271 N.Y.S. 2d 429 (1967)
Peyele v. Billmeyer, 282 N.Y.S. 2d 797 (1969)
Smith v. Wayne Co. Sheriff, 278 Mich. 91, 96 (1936)
State v. Albertson, 470 P. 2d 300 (1970)
State v. Betts, 252 N.E. 2d 266 (1969)
State ex rel Cox v. Board of Education of S.L.C. 21 Utah 401.
State v. Eitel, 227 So. 2d 489 (1969)
State v. Laitenin, 459 P. 2d 789 (1969)
State v. Lombardi, 241 A. 2d 625 (1968)
United States v. L. Cohen Grocery Co., 264 F. 218 aff'd 255 U.S. 81 (1921)
Wall v. King, 206 F. 2d 878 (1953)

CONSTITUTIONS CITED

Constitution of the United States, Amendment V
Constitution of the United States, Amendment VI
Constitution of the United States, Amendment IX
Constitution of the United States, Amendment XIV

STATUTES CITED

Utah Code Annotated, Section 41-6-107.8 (a) (1953)

IN THE SUPREME COURT
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STATEMENT OF KIND OF CASE

Appellant, Gary D. Acker, appeals the constitutionality of Utah Code Annotated, Section 41-6-107.8 (a) (1953), operating a motorcycle upon a public highway posted for a speed higher than 35 miles per hour without wearing protective headgear, and a finding of guilty.

DISPOSITION IN LOWER COURT

The appellant was convicted and sentenced in the Ogden City Court and appealed that city court conviction to the Second District Court, Weber County, State of Utah. The Second District Court, the Honorable Ronald O. Hyde, presid-

ing, upheld the conviction and found Utah Code Annotated, Section 41-6-107.8 (a) (1953) constitutional.

RELIEF SOUGHT ON APPEAL

Appellant respectfully requests the court to set aside the conviction on the grounds that the statute under which he was convicted is unconstitutional.

STATEMENT OF FACTS

The appellant was convicted and sentenced in the Ogden City Court of Ogden City, County of Weber, Utah, for having operated a motorcycle upon a public highway posted for a speed higher than 35 miles per hour without wearing a protective headgear which complied with standard established by the Utah Commissioner of Public Safety, in violation of Utah Code Annotated, Section 41-6-107.8 (a) (1953), which reads:

> No person shall operate or ride upon a motorcycle or motor-driven cycle upon a public highway posted for speeds higher than 35 miles per hour, unless he is wearing protective headgear which complies with standards established by the commissioner of public safety.

The appellant appealed that city court conviction and sentence and the matter was set for trial de novo in the Second District Court, the Honorable Ronald O. Hyde presiding. The evidence was stipulated. It was stipulated that the appellant had been arrested while operating a motorcycle upon a public highway in a zone posted for speeds higher than 35 miles per hour, without wearing any protective headgear.

The appellant moved the court to dismiss the complaint and discharge the appellant on the grounds that the evidence failed to prove the appellant had committed any crime and that Utah Code Annotated, Section 41-6-107.8 (a) (1953), the statute under which the appellant is charged, is unconstitutional, void, and of no effect whatsoever. After hearing oral arguments, the court found the appellant guilty and the statute constitutional.

ARGUMENT

POINT I

THE EVIDENCE FAILED TO PROVE THE APPELLANT HAD COMMITTED ANY CRIME.

Utah Code Annotated, Section 41-6-107.8 (a) (1953), under which the appellant is charged, reads:

> No person shall operate or ride upon a motorcycle or motor-driven cycle upon a public highway posted for speeds higher than 35 miles per hour, unless he is wearing protective headgear which complies with standards established by the commissioner or public safety.

Admittedly, the evidence did show that the appellant operated a motorcycle upon a public highway posted for speeds higher than 35 miles per hour without wearing protective headgear; however, there was no evidence whatsoever as proof of the last required element of the alleged offense, i.e., noncompliance with standards established by the commissioner of public safety.

To date, the appellant is unaware of and unable to find any standards in this area that have been established by the commissioner of public safety. Relying on the fact that no such standards exist, the state is unable to prove every element of the alleged offense. Without being able to show a violation of such standards, the complaint should be dismissed and the appellant discharged.

POINT II

UTAH CODE ANNOTATED, SECTION 41-6-107.8 (a) (1953), UNDER WHICH THE APPELLANT IS CHARGED, VIOLATES THE FIFTH, NINTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION IN THAT IT IS AN INVALID EXERCISE OF THE POLICE POWER OF THE STATE TO PROTECT THE PUBLIC WELFARE; IT IS AN UNREASONABLE INFRINGEMENT OF INDIVIDUAL LIBERTY AND THE RIGHT TO THE FREE USE OF ONE'S PROPERTY; AND ITS STANDARDS ARE TOO VAGUE AND INDEFINITE TO BE ENFORCEABLE.

Motorcycle helmet regulations are of comparatively recent origin and typically provide that operators and passengers of motorcycles and motor scooters must wear protective helmets of a type approved by a state agency.

Such regulations reflect a widespread effort to combat the rising death and injury toll of accidents in which motorcyclists are involved.

The courts have reached different results as to the constitutional validity of the helmet law in those jurisdictions in which the issue has been raised. In some cases, courts have upheld motorcycle helmet regulations as a legitimate exercise

of the police power of the state to legislate for the promotion of the general health, safety, and welfare, pointing out, in effect, that without helmets, motorcyclists are particularly vulnerable to being struck in the head by loose stones kicked up by wheels, which may cause such injury or distraction to the operator as could result in loss of his control of the motorcycle, thereby endangering other users of the public highways.

On the other hand, there is authority to the effect that the helmet regulations are unconstitutional because they do not bear a substantial relationship to the protection of the general public but serve only to protect the individual motorcycle operator from himself.

So far as can be determined, this case is of first impression in Utah. Michigan, American Motorcycle Ass'n v. Davids, 158 N.W. 2d 72 (1968); Illinois, Illinois v. Fries, 250 N.E. 2d 149 (1969), and Ohio, State v. Betts, 252, N.E. 2d 266 (1969), have held helmet statutes to be unconstitutional. The New York circuit court of appeals has split decisions on this type of law. People v. Smallwood, 271 N.Y.S. 2d 429, (1967) has held the helmet statute to be unconstitutional while Peyele v. Bielmeyer, 282 N.Y.S. 2d 797 (1969), has held it to be constitutional. As far as can be determined, the New York Supreme Court has not made a decision.

It is conceded that a majority of the cases have held helmet statutes to be constitutional. See Everhardt v. New Orleans, 217 So. 2d 400 (1968); State v. Laitenin, 459 P. 2d 789 (1969); State v. Eitel 227 So. 2d 489 (1969); State v. Albertson, 470 P. 2d 300, (1970); Love v. Bell, 465 P. 2d 118 (1970), and others.

In all of the recent challenges, the questions were whether such laws were too vague and indefinite to be enforceable, or were an unreasonable infringement of individual liberty.

If either of the above challenges to this type of statute is valid, then fundamental rights are being denied by the states without due process of law as provided for in the Fifth, Ninth and Fourteenth Amendments of the United States Constitution.

The Fifth Amendment provides:

> No person shall ... be deprived of life, liberty, or property, without due process of law ...

The Ninth Amendment provides:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparge others retained by the people.

The Fourteenth Amendment provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The power of the state is the power vested in the legislature to enact laws not repugnant to the Constitution which shall protect the public health, safety and welfare. State ex rel Cox v. Board of Education of S.L.C., 21 Utah 401. The police power of the state extends only to the protection of public health, public safety, and public welfare and insures each individual an uninterrupted enjoyment of the rights and privileges conferred on him by law. Nebbie v. New York, 291 U. S. 502 (1934). Insofar as the police power is utilized by the state, the means employed to effect its exercise may be neither arbitrary nor oppressive, but must bear a real and substantial relation to an end which is public. The ancient maxim "sic utere tuo ut alienum non laedas" (so use your own that you do not injure that of another) has often been cited as one of the essential bases of the police power. In this regard, the protection of the public welfare through past application of the police power has been limited to instances where one individual's conduct adversely affected others, not merely his own. To uphold Utah's helmet statute would represent an extension of the limits of the police power to include the regulation of an individual's conduct where he alone could be adversely affected.

Let us now compare the arguments supporting and opposing helmet statutes.

Arguments Supporting Statutes

A. Public Welfare threatened.

The arguments favoring helmet statues are based on the contention that the public welfare is endangered by the unhelmeted rider. Courts upholding helmet statutes have relied on one or a combination of propositions based on this

theory. In State v. Lombardi, 241 A 2d 625 (1968), the court suggests that the injured rider will become a burden on society and holds that the legislature is not powerless to prohibit individuals from pursuing a course of conduct which could conceivably result in their becoming public charges. In addition to being a potential case for public economic assistance, the disabled rider will be unable to add his fair share to the productivity of society. On this point, the court in People v. Carmichael, 288 N.Y.S. 2d 931, (1968) stated: "It is to the interest of the state to have strong, robust, healthy citizens capable of self-support, of bearing arms, and of adding to the resources of the country."

Of course, the fallacy of propositions such as these is glaringly magnified when the same logic is applied to other frailties of human beings. Should the state through the exercise of its police power be able to criminally punish individuals who expose themselves to diseases or to other injurious accidents? Of course not! Surely America is not on the road of agreement with Hitler and his concepts of the perfect race whereby the weak and afflicted are annihilated.

B. Direct Benefit to Others.

In contrast to those benefits accruing to the individual cyclist and thus to the whole of society, some courts have found in helmet statutes a legislative intent to confer direct benefits to certain classes of citizens, specifically, highway users. Since the rider is in an exposed position, it has been suggested by some courts that flying stones or bugs might strike the unhelmeted rider's head, causing loss of control, thereby endangering pedestrians or other motorists. State v. Lombardi, supra.

If this reasoning were sound, a uniform application and equal protection of laws would also require helmets to be worn by riders in convertibles or other vehicles that were not fully enclosed and protected from such objects.

C. Power to Control Use of Highways

The position that the use of the public highways is a privilege, not a right, is assumed by some courts to justify helmet laws as a valid exercise of state police power. Commonwealth v. Howie, 238 N.E. 2d 373 (1968). Even though the use of the public highways may be only a conditional privilege subject to state control, the state may not exercise this power arbitarily. Wall v. King, 206 F. 2d 878 (1953). The legislature must still determine that the public welfare is endangered and must reasonably exercise the police powers to meet that public need.

D. Equipment Regulation.

The final contention favoring helmet statutes sees them as simply equipment regulations, similar to those requiring seat belts and other safety devices; therefore, no problem of individual liberty is involved. While, however, nearly every state requires that new automobiles be equipped with seat belts, no state has gone so far as to demand on penal sanctions that they must be worn.

Requiring manufacturers to equip vehicles with safety devices is substantially different from requiring an individual to do something protective about his personal welfare alone. This distinctiction is crucial and is the basis of the counter arguments that the helmet statutes are unconstitutional.

Arguments Opposing Statutes

A. Infringement of Individual Liberty.

The central argument challenges the constitutionality of helmet statutes on the ground that only the individual and not the public welfare is endangered. Hence, the state should not invoke its police powers. American Motorcycle Ass'n. v. Davids, Supra.

> Freedom of choice, if that choice does not affect the public welfare, includes the right to make what the majority believes to be the wrong or unintelligent choice, as well as the right or intelligent choice. For if the majority can set itself up to judge, in matters of individual welfare, between right and wrong, and enforce those judgments with criminal sanctions, then all areas of personal liberty will be jeopardized.
>
> The police power does not undertake to protect the individual against his own acts, partly because that would involve an inquisitorial control over private life and conduct both intolerable and unenforceable, partly because police power ought not and is not intended to be a substitute for individual self-control and responsibility but finds its proper sphere in guarding against evils and dangers beyond the control of him whom they threaten. The right to choose one course of action even to the extent of incurring risks where others are not concerned is a part of individual liberty. E. Freund, The Police Power, Public Policy and Constitutional Rights. Section 155 (1904).

Similarly, to allow this type of regulation is to open the door to an unlimited benevolent parternalism of govern-

ment which would surely be inimical to our democratic way of life and our constitutionally protected liberties.

The court in American Motorcycle Ass'n v. Davids, Supra. held the helmet statute to be unconstitutional as an invalid exercise of the state's police power, since it has no relationship to public safety. The court stated:

> It is contended by the plaintiff that the legislative concern is solely related to the safety of the motorcyclist and passenger and can have no possible relationship to the safety and well-being of other persons, much less the public at large.

There can be no doubt that the state has a substantial interest in highway safety. In Smith v. Wayne Co. Sheriff, 278 Mich. 91, 96 (1936), the court said, "It is well settled that the legislature has the power to control and regulate the use of the highways." but the difficulty with adopting this as a basis for decision is that it would also justify a requirement that automobile drivers wear helmets or buckle their seat belts for their own protection.

These arguments all prove too much.

In a series of decisions, this court has held that even though the governmental purpose be ligitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.

The plaintiff relies also upon the reserved powers under the Ninth Amendment of the United States Constitution

and cites the recent decision in Greswold v. Connecticut, 381 U.S. 479, (1965), wherein Justice Goldberg, concurring, invoked this amendment to invalidate a Connecticut statute making the use of contraceptives by the individual user a private right of the individual free from state coercion and control, and equated this right with the right to be let alone. Justice Brandeis stated this principle in Olmstead v. Colorado, 277 U.S. 438, (1928).

B. Legislative Intent Solely to Protect Rider.

Courts which have struck down helmet statutes find a clear and single legislative purpose is to afford the rider an added degree of protection in case of mishaps. This view tends to deny that such statutes act to directly benefit other users of the highways.

Suggesting that the problem of loss of control due to flying stones or bugs was not intended to be met by helmet statutes, the court in State v. Betts, Supra, stated:

> It is said that the wearing of a mask and helmet might well prevent a stone or bug from hitting a cyclist in the face, causing him to lose control of his cycle, swerve into the oncoming traffic lane and cause a grievous accident. This court is of the opinion that to uphold the statute under such reasoning would torture logic beyond its limits.

C. Detrimental Effects of Helmets.

Courts have raised another point to invalidate a mandatory helmet statute. Rather than being beneficial, it is contended that the wearing of a crash helmet tends to impair the rider's vision and hearing. This impairment makes the

rider less aware of what is occurring around him and, therefore, more of a menace to others on the highways.

D. Statutes Too Vague and Indefinite to be Enforced.

The final argument posed in opposition to helmet statutes is that statutory standards are too vague and indefinite to inform the cyclist of what is required of him.

If the standards are not sufficiently clear and available to the cyclist, conviction for violating such a statute would constitute deprivation of liberty without due process of law.

U. S. Constitution Amendment VI, provides:

> In all criminal prosecutions, the accused shall enjoy the right ... to be informed of the nature and cause of accusation ...
>
> "The effect of the clause entitling an accused to know the nature and cause of accusation against him commences with the statutes fixing or declaring offenses. It adopts the general rule of common law that such statutes are not to be construed to embrace offenses which are not within their intentions and terms." See United States v. L. Cohen Grocery Co., 264 F. 218, aff'd. 255 U.S. 81 (1921).

Utah Code Annotated, Section 41-6-107.8 (a) (1953), under which the defendant is charged in the instant case, merely refers to standards established by the commissioner of public safety. No such standards were in evidence, and no such standards have been made available to the defendant.

POINT III

UTAH CODE ANNOTATED, SECTION 41-6-107.8 (a) (1953), UNDER WHICH THE DEFENDANT IS CHARGED, VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION IN THAT IT IS ARBITRARY AND CAPRICIOUS.

The rule is well settled that a state may classify persons and objects for the purpose of legislation. District of Columbia v. Brooke, 218 U.S. 138. This is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment however. One of the essential requirements as to classification, is that it must not be capricious or arbitrary, but must have a rational basis.

Utah's helmet statute is only concerned with those motorcyclists who are upon public highways posted for speeds in excess of 35 miles per hour. No other state has this added provision. Such classification is arbitrary and has no rational basis when considered in light of the other arguments. It has no relationship to the act of the person, but the particular highway he may be on.

The effect of this provision then makes the law applicable only to certain members of the class of people who ride motorcycles. When law involves classification, it must effect alike, all persons in the same class. Duncan v. Missouri, 153 U.S. 377. In the case of Utah's helmet statute, if a person who rides a motorcycle, lives in an area surrounded only by highways, he is absolutely precluded from riding his motorcycle without a helmet. The person who lives in a residential area however, has much greater freedom to ride his motorcycle.

Because of the arbitrary nature of the law, the entire law must be declared void.

CONCLUSION

The court should grant the defendant's motion to dismiss the complaint and discharge the defendant for the reasons stated in this brief on the grounds that the plaintiff has failed to prove the defendant has committed any crime and that Utah's helmet statute is unconstitutional.

The single legislative intent to protect the individual, not the public, is made clear by inclusion of the requirement that the passenger as well as the operator of a motorcycle wear protective headgear. Injury to the passenger could certainly cause no harm to other motorists on the highways. Also, this is strengthened by the requirement only being applicable in areas where the posted speed limit is in excess of 35 miles per hour.

Utah's helmet statute, inter alia, is an atempt to unconstitutionally exercise the state's police power and should be declared invalid, unconstitutional, and of no effect whatsoever.

Respectfully submitted,

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